

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS & ST. JOHN

	)	
In Re:	)	
	)	
3:06-bk-30007 (MOTION TO	)	
WITHDRAW THE REFERENCE TO THE	)	Civil No. 2007-10
BANKRUPTCY COURT filed by	)	
EMERGING COMMUNICATIONS, INC.)	)	
	)	
	)	
	)	
	)	
In Re:	)	
	)	
3:06-bk-30008 (MOTION TO	)	Civil No. 2007-11
WITHDRAW THE REFERENCE TO THE	)	
BANKRUPTCY COURT filed by	)	
INNOVATIVE COMMUNICATION	)	
COMPANY, LLC)	)	
	)	
	)	
	)	
In Re:	)	
	)	
3:06-bk-30009 (MOTION TO	)	Civil No. 2007-12
WITHDRAW THE REFERENCE TO THE	)	
BANKRUPTCY COURT filed by	)	
JEFFREY J. PROSSER)	)	
	)	
	)	
	)	
In Re:	)	
	)	
3:06-bk-30007 (MOTION TO	)	
WITHDRAW THE REFERENCE TO THE	)	Civil No. 2007-16
BANKRUPTCY COURT filed by the	)	
PUBLIC SERVICES COMMISSION OF	)	
THE UNITED STATES VIRGIN	)	
ISLANDS)	)	
	)	

_____	)	
In Re:	)	
	)	
3:06-bk-30008 (MOTION TO	)	Civil No. 2007-17
WITHDRAW THE REFERENCE TO THE	)	
BANKRUPTCY COURT filed by the	)	
PUBLIC SERVICES COMMISSION OF	)	
THE UNITED STATES VIRGIN	)	
ISLANDS)	)	
_____	)	
	)	
In Re:	)	
	)	
3:06-bk-30009 (MOTION TO	)	Civil No. 2007-18
WITHDRAW THE REFERENCE TO THE	)	
BANKRUPTCY COURT filed by the	)	
PUBLIC SERVICES COMMISSION OF	)	
THE UNITED STATES VIRGIN	)	
ISLANDS)	)	
_____	)	

**ORDER**

**GÓMEZ, C.J.**

Before the Court are the motions of Emerging Communications, Inc. ("Emerging"), Innovative Communications Company, LLC ("Innovative"), Jeffrey J. Prosser ("Prosser"), and the Public Services Commission of the United States Virgin Islands ("PSC") to withdraw the reference to the United States Bankruptcy Court for the District of the Virgin Islands, (the "VI Bankruptcy Court").

## **I. FACTS**

On February 10, 2006, Greenlight Capital Qualified, LP, Greenlight Capital, LP, and Greenlight Capital Offshore, Ltd, (collectively, the "Greenlight Entities") filed involuntary petitions pursuant to Chapter 11 of the United States Bankruptcy Code ("Chapter 11") against Emerging, Innovative, and Prosser (collectively, the "Debtors") in the United States Bankruptcy Court for the District of Delaware (the "Delaware Cases"). Thereafter, the Debtors filed motions to transfer the Delaware Cases to the VI Bankruptcy Court. Additionally, the Greenlight Entities filed a motion to determine proper venue of the Delaware Cases.

During the pendency of the motions regarding the venue of the Delaware Cases, the Debtors each filed the following voluntary Chapter 11 petitions in the VI Bankruptcy Court: *In Re: Emerging Communications, Inc.*, Bankruptcy No. 06-30007, *In Re: Innovative Communication Company, LLC*, Bankruptcy No. 06-30008, and *In Re: Jeffrey J. Prosser*, Bankruptcy No. 06-30009 (collectively, the "VI Cases"). Pursuant to Federal Rule of Bankruptcy Procedure 1014(b) ("Rule 1014"), the VI Cases were stayed pending a decision on the venue motions in the Delaware Court.

The Delaware Court issued an order dated December 14, 2006, which held that the VI Bankruptcy Court was the appropriate venue for the Delaware Cases (the "Venue Order"). The Venue Order stated that the Delaware Cases would bear the captions and case numbers of the VI Cases from that point forward. The Venue Order also provided that the files would be transferred from Delaware to the Virgin Islands. Additionally, the Venue Order terminated the stay of the VI Cases pursuant to Rule 1014.

On December 22, 2006, the Debtors moved for withdrawal of the reference to the VI Bankruptcy Court, pursuant to 28 U.S.C. § 157(d)<sup>1</sup> ("Section 157(d)") and Federal Rule of Bankruptcy Procedure 5011<sup>2</sup> ("Rule 5011"). The PSC moved for withdrawal of the reference on January 9, 2007.

## **II. ANALYSIS**

In ruling on a motion for withdrawal of the reference to a bankruptcy court, the district court must first determine whether the motion was timely filed. See *id.* (allowing district courts to

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<sup>1</sup> Section 157(d) provides that "[t]he district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown." 28 U.S.C. § 157(d) (2005).

<sup>2</sup> Rule 5011(a) provides that "[a] motion for withdrawal of a case or proceeding shall be heard by a district judge." F.R.B.P. 5011(a) (1991).

grant a permissive withdrawal of reference "upon timely motion"); see also *In re Pruitt*, 910 F.2d 1160, 1168 (3d Cir. 1990) (noting the existence of a timeliness requirement for motions to withdraw pursuant to Rule 157(d)). Timeliness of motions for withdrawal of the reference is not defined by statute. Courts have held that such motions are timely if made at the first reasonable opportunity in light of the developments in the bankruptcy proceedings. *In re Schlein*, 188 B.R. 13, 14 (E.D. Pa. 1995); *United States v. Kaplan*, 146 B.R. 500, 503 (D. Mass. 1992); *In re Baldwin-United Corp.*, 57 B.R. 751, 753-54 (S.D. Ohio 1985); *In re Giorgio*, 50 B.R. 327, 328 (D.R.I. 1985).

Here, the Delaware Court issued the Venue Order on December 14, 2006. The Debtors filed their motions for withdrawal in the VI Bankruptcy Court approximately one week later, and the PSC moved for withdrawal in the VI Bankruptcy Court approximately three and a half weeks later. Accordingly, the motions of the Debtors and the PSC were timely filed. See, e.g., *In re Schlein*, 188 B.R. at 14 (holding that a motion for withdrawal of reference was timely when filed one week after the bankruptcy court ruled on abstention and transfer issues); *In re CM Holdings, Inc.*, 221 B.R. 715, 720 (D. Del. 1998) (holding that a creditor's delay of over five weeks after the debtor filed an objection to the

creditor's proof of claim did not render the motion untimely).

The district court next turns to whether cause exists for discretionary withdrawal of the reference to the bankruptcy court. In determining whether "cause" exists for discretionary withdrawal under Section 157(d), it is appropriate to consider four factors: (1) promoting uniformity in bankruptcy administration, (2) reducing forum-shopping, (3) fostering economical use of debtors' and creditors' resources, and (4) expediting the bankruptcy process. *In re Pruitt*, 910 F.2d at 1168.

At their core, the motions of the Debtors and the PSC assert that withdrawal is appropriate because the hearings for the VI Cases will be conducted in Pittsburgh, Pennsylvania. The Debtors argue that it would be more convenient for them if the hearings were located in the U.S. Virgin Islands because: (i) their subsidiaries and operating companies are key assets to the U.S. Virgin Islands infrastructure; (ii) all of their assets and operations are located in the U.S. Virgin Islands; and (iii) the U.S. Virgin Islands government and the PSC have a strong interest in any sale of the Debtors' companies or their subsidiaries or operating companies. Similarly, the PSC claims that the ratepayers and general public in the U.S. Virgin Islands will be

affected by any court-approved action relating to the ownership or operation of the Debtors' regulated subsidiaries. The PSC argues that the ratepayers and general public in the U.S. Virgin Islands should be able to physically observe all of the proceedings if they wish.

Neither the Debtors nor the PSC, however, have sufficiently shown that withdrawal of the reference to the VI Bankruptcy Court would promote uniformity in bankruptcy administration, reduce forum shopping, foster the economical use of the debtors' and the creditors' resources, or expedite the bankruptcy process.

Furthermore, the VI Cases are currently pending before the VI Bankruptcy Court - the exact court deemed appropriate by the Venue Order. Neither the Debtors nor the PSC have ever requested that the hearings be conducted exclusively or even predominantly in the U.S. Virgin Islands. The Debtors and the PSC seem to presume that the VI Bankruptcy Court would deny a request to schedule the hearings for these matters in the U.S. Virgin Islands, but offer no evidence to support such a presumption.<sup>3</sup>

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<sup>3</sup> Indeed, even a cursory review of the Bankruptcy Court's calendar over the past 12 months reveals that the bankruptcy judge assigned to this case has held hearings in the Virgin Islands. More specifically in this case, a significant hearing in this matter is scheduled to commence on February 5, 2007, in the Virgin Islands.

Accordingly, the Debtors and the PSC have failed to show cause sufficient to overcome the presumption that these matters should be heard by the VI Bankruptcy Court. *See, Hatzel & Buehler, Inc. v. Central Hudson Gas & Elec. Corp.*, 106 B.R. 367, 371 (D. Del. 1989) ("The 'cause shown' requirement in section 157(d) creates a presumption that Congress intended to have bankruptcy proceedings adjudicated in bankruptcy court unless rebutted by a contravening policy.") (citations and quotations omitted). The premises considered, it is hereby

**ORDERED** that the motions for withdrawal of the reference to the VI Bankruptcy Court are hereby **DENIED**.

**Dated: January 12, 2007**

\_\_\_\_\_/S/  
**CURTIS V. GÓMEZ**  
**Chief Judge**

**A T T E S T:**

WILFREDO F. MORALES  
Clerk of Court

**By:** \_\_\_\_/S/  
Deputy Clerk



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